UNITED STATES DISTRICT COURT
DISTRICT OF NEW MEXICO

FILED

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MARGIE T. MESTAS,

Plaintiff,

vs. No. CIV-03-1209 LFG DJS

HALL APARTMENTS MANAGEMENT, LTD;
HALL APARTMENT ADVISORS, INC.;
GATEWOOD APARTMENTS, NHP, ELK, LP;
ALBUQUERQUE WHALER 95-B CORP.; and
THYSSENKRUPP ELEVATORS,

Defendants.

JURY DEMAND

COMPLAINT FOR DAMAGES

COMES NOW Plaintiff, Margie T. Mestas (hereinafter, Mrs. Mestas), by and through her attorney of record, J. Edward Hollington, J. Edward Hollington & Associates, and for her complaint against the Defendants, states:

I. JURISDICTION/VENUE

1. Plaintiff Margie T. Mestas (hereinafter, Mrs. Mestas) is a resident of Albuquerque, Bernalillo County, New Mexico.

2. Defendant Hall Apartments Management, Ltd. (hereinafter, HAML), is a Texas limited partnership which manages the Gatewood Apartments where Mrs. Mestas resides.

3. Defendant Hall Apartment Advisors, Inc. (hereinafter, HAAI), is a Texas corporation, and is the managing general partner of Defendant HAML.

4. Defendant ThyssenKrupp Elevators is a Delaware corporation, which maintains an office and does business in the state of New Mexico.

5. Defendant Albuquerque Whaler 95-B Corp. is a Delaware corporation, and upon information and belief is an owner of the Gatewood Apartments where Mrs. Mestas resides.

6. Defendant Gatewood Apartments, NHP, Elk, LP is a limited partnership, who upon information and belief is also an owner of Gatewood Apartments.

7. All events and transactions pertinent to this action occurred in Albuquerque, Bernalillo County, New Mexico.

8. This Court has jurisdiction over the parties and subject matter pursuant to 28 USC, § 1332.

9. Venue is properly before this court.

STATEMENT OF FACTS

10. Mrs. Mestas lives with her husband in apartment no. 429 E of the Gatewood Apartments (hereinafter, the property), located at 6500 Montgomery Blvd. N.E., in Albuquerque, Bernalillo County, New Mexico.

11. Mrs. Mestas and her husband live in the apartment pursuant to a written lease dated July 1, 2003..

12. The names listed on the written lease as lessors are Defendants HAML, Gatewood Apartments NHP, Elk, and Albuquerque Whaler 95-B Corp.

13. The written lease is subject to the provisions of New Mexico Uniform Owner-Resident Relations Act, NMSA 1978, § 47-8-1 et seq. (1999).

14. Defendants Albuquerque Whaler 95-B Corp., and Gatewood Apartments, NHP, Elk, LP, are owners of the property, and Defendants HAML and HAAI are management agents of the owner.

15. Defendant HAML manages the property pursuant to a management contract with Defendants Albuquerque Whaler 95-B Corp. and/or Gatewood Apartments, NHP, Elk, LP.

16. Defendant HAAI is the managing general partner of Defendant HAML.

17. Defendant ThyssenKrupp Elevators, or its predecessors, installed elevators in the apartment complex where Mrs. Mestas resides.

18. Defendant ThyssenKrupp Elevators has contracts with the other defendants to maintain and repair the elevators in the property where Mrs. Mestas resides.

19. Plaintiff's apartment, 429 E, is on the fourth floor of the apartment complex. There is an elevator for Mrs. Mestas, other residents, and visitors to the property which is identified as a Dover Elevator No. E38061 (hereinafter referred to as "the elevator").

20. Mrs. Mestas is 67 years old, and has chronic rheumatoid arthritis. She has difficulty walking up and down stairs, and relies on the elevator of the property for her primary access to and from her residence.

21. On Monday, September 8, 2003, Mrs. Mestas left her apartment at approximately 9:00 a.m., and entered the elevator on the 4th floor, near her apartment. She entered the elevator, pushed the button for floor no. 1, and the elevator fell four floors, and crashed to the ground.

22. Mrs. Mestas sustained injuries to her hips, back, neck, and other as yet undetermined injuries as a result of the elevator crashing to the ground with her inside.

23. Mrs. Mestas was terrified as she realized she was falling helplessly in the elevator. When the elevator slammed to the ground, it filled with dust which Mrs. Mestas thought was smoke. She yelled for help because the doors were stuck, and she was trapped.

24. Mrs. Mestas was finally removed from the elevator by Defendant HAML employees.

25. There were no warning signs or "out of service" signs on the elevator, or in the elevator, on September 8, 2003 to warn Mrs. Mestas of any dangerous or defective condition of the elevator.

26. The elevator has a long history of breakdowns, and in the weeks preceding her fall, the elevator had been inoperable several times. Other residents had reported numerous problems with the elevator to the Defendants.

27. The Defendants failed to maintain and repair the elevator, which created an unreasonable risk of injury to Ms. Mestas and others who use the elevator.

28. NMSA 1978, § 47-8-20(A) requires owners of property, subject to Uniform Owner-Resident Relations Act, to maintain elevators in good and safe working order.

29. All the Defendants had a duty to maintain the elevator in good and safe working order.

30. Mrs. Mestas had no control over the operation or maintenance of the elevator, except for pressing the buttons for access and floor numbers.

31. At the time Ms. Mestas entered the elevator on September 8, 2003, she had no warning at that time the elevator was defective or dangerous.

32. Other than not entering the elevator on September 8, 2003, there was no action Mrs. Mestas could have taken to have avoided crashing to the ground when she entered the elevator and the door closed.

33. The Defendants' failure to maintain and repair the elevator in good and safe working condition created a hazardous condition for Mrs. Mestas and others.

34. As a proximate result of the Defendants' actions and omissions, Plaintiff has incurred injuries requiring medical care which continues, and is expected to continue into the

future, and she has suffered additional compensatory damages, including, but not limited to, pain and suffering, emotional distress, and other pecuniary losses to be proven at trial.

35. The Defendants' acts and omissions constitute willful, wanton, malicious and reckless disregard for Mrs. Mestas' safety, and the safety of others.

COUNT I - NEGLIGENCE

36. Plaintiff realleges the allegations contained in paragraphs 1 through 35 of this Complaint as if fully set forth herein.

37. The Defendants owed Mrs. Mestas a duty to exercise ordinary care to maintain the elevator in a good, safe working condition.

38. Defendants breached the duty they owed to Mrs. Mestas.

39. As a proximate result of Defendants breach of their duty of ordinary care, Mrs. Mestas was injured on September 8, 2003, has incurred and will continue to incur expenses for medical care, emotional distress, and other compensatory damages to be proven at trial.

40. The conduct of the Defendants was malicious, wanton, willful, reckless, and Mrs. Mestas is further entitled to relief of punitive damages.

WHEREFORE, Plaintiff respectfully requests this Court to enter judgment in her favor, and against the Defendants, and award her compensatory damages, punitive damages, pre-judgment and post-judgment interest, costs, and such other and further relief as the Court deems just and appropriate.

COUNT II - PREMISES/LIABILITY

41. Plaintiff realleges the allegations contained in paragraphs 1 through 40 of this Complaint as if fully set forth herein.

42. Defendants Albuquerque Whaler 95-B Corp., Gatewood Apartments, NHP, Elk, LP, HAML, and HAAI, owed a duty to Mrs. Mestas to keep the property safe.

43. Defendants Albuquerque Whaler 95-B Corp., Gatewood Apartments, NHP, Elk, LP, HAML, and HAAI, owed Mrs. Mestas a duty to warn her of dangerous conditions.

44. Defendants Albuquerque Whaler 95-B Corp., Gatewood Apartments, NHP, Elk, LP, HAML, and HAAI, owed Mrs. Mestas a duty to make improvements and repairs to the elevator, and to use ordinary care in carrying out such duties of maintenance and repairs.

45. The Defendants breached their duties to Mrs. Mestas.

46. As a proximate result of Defendants breach of their duty of ordinary care, Mrs. Mestas was injured on September 8, 2003, has incurred and will continue to incur expenses for medical care, emotional distress, and other compensatory damages to be proven at trial.

47. The conduct of the Defendants was malicious, wanton, willful, reckless, and Mrs. Mestas is further entitled to relief of punitive damages.

WHEREFORE, Plaintiff respectfully requests that this Court enter judgment in her favor, and against the Defendants, and award her compensatory damages, punitive damages, pre-judgment and post-judgment interest, costs, and such other and further relief as the Court deems just and appropriate.

COUNT III - RES IPSA LOQUITUR

48. Plaintiff realleges the allegations contained in paragraphs 1 through 47 of this Complaint as if fully set forth herein.

49. The injuries and damages to Mrs. Mestas were proximately caused by the defective elevator at the property which was Defendants' responsibilities to manage and control.

50. The free falling elevator in which Mrs. Mestas was riding as a passenger on September 8, 2003 caused injuries and damages to her of a kind which does not ordinarily

occur in the absence of negligence on the part of the Defendants who have control of the elevator.

51. As a proximate result of Defendants breach of their duty of ordinary care, Mrs. Mestas was injured on September 8, 2003, has incurred and will continue to incur expenses for medical care, emotional distress, and other compensatory damages to be proven at trial.

52. The conduct of the Defendants was malicious, wanton, willful, reckless, and Mrs. Mestas is further entitled to relief of punitive damages.

WHEREFORE, Plaintiff respectfully requests this Court to enter judgment in her favor, and against the Defendants, and award her compensatory damages, punitive damages, pre-judgment and post-judgment interest, costs, and such other and further relief as the Court deems just and appropriate.

COUNT IV - NEGLIGENCE PER SE

53. Plaintiff realleges the allegations contained in paragraphs 1 through 52 of this Complaint as if fully set forth herein.

54. There was in force at the time Mrs. Mestas was using the elevator on September 8, 2003 a statute which provided that an owner of leased property must maintain the property in good and safe working order and condition including "electrical, plumbing, sanitary, heating, ventilating, air conditioning, and other facilities and appliances, including **elevators**, if any, supplied or required to be supplied by owner." NMSA 1978, § 47-8-20(A)(4).

55. Defendants Hall Apartments Management, Ltd, Hall Apartment Advisors, Inc., Gatewood Apartments, NHP, Elk, LP, and Albuquerque Whaler 95-B Corp. violated the statute by failing to maintain the elevator in a good, safe, and working order which created unreasonable risk of injury to Mrs. Mestas and others.

56. As a proximate result of Defendants' violation of the statute, Mrs. Mestas was injured on September 8, 2003, and has incurred and will continue to incur expenses for medical care, emotional distress, and other compensatory damages to be proven at trial.

57. The conduct of the Defendants was malicious, wanton, willful, reckless, and Mrs. Mestas is further entitled to relief of punitive damages.

WHEREFORE, Plaintiff respectfully requests this Court to enter judgment in her favor, and against the Defendants, and award her compensatory damages, punitive damages, pre-judgment and post-judgment interest, costs, and such other and further relief as the Court deems just and appropriate.

COUNT V - INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS

58. Plaintiff realleges the allegations contained in paragraphs 1 through 57 of this Complaint as if fully set forth herein.

59. The Defendants knew, or should have known, that the elevator was defective, unsafe, and in poor condition, which created hazardous conditions for Mrs. Mestas and others.

60. The conduct of the Defendants was extreme and outrageous under the circumstances.

61. The Defendants acted recklessly, and as a result of such reckless conduct, Mrs. Mestas suffered extreme and severe emotional distress.

62. As a proximate result of Defendants breach of their duty of ordinary care, Mrs. Mestas was injured on September 8, 2003, has incurred and will continue to incur expenses for medical care, emotional distress, and other compensatory damages to be proven at trial.

63. The conduct of the Defendants was malicious, wanton, willful, reckless, and Mrs. Mestas is further entitled to relief in the form of punitive damages.

WHEREFORE, Plaintiff respectfully requests this Court to enter judgment in her favor, and against the Defendants, and award her compensatory damages, punitive damages, pre-judgment and post-judgment interest, costs, and such other and further relief as the Court deems just and appropriate.

Respectfully submitted,

J. EDWARD HOLLINGTON & ASSOCIATES, P.A.

By: ______________________

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